

MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
TIMOTHY E. REVERO, ESQ (14603)
MCAVOY AMAYA & REVERO, ATTORNEYS
600 S. 8th Street,
Las Vegas, NV 89101
Telephone: 702.299.5083
Facsimile: 702.995.7137
Mike@mrlawlv.com
Attorneys for Plaintiff Marlon Brown

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARLON LORENZO BROWN,
PLAINTIFF,
VS.
DANTE TROMBA; *ET AL.*
DEFENDANTS.

Case No.: 2:17-cv-02396-APG-BNW

MOTION TO WITHDRAW

COME NOW, Defendant, MARLON BROWN, by and through his attorney of record, TIMOTHY E. REVERO, ESQ. and MICHAEL J. MCAVOYAMAYA, of McAvoy Amaya & Revero, Attorneys, and hereby files this Motion to Withdrawal as Counsel of record pursuant to Nevada Supreme Court Rule 46, Nevada Rules of Professional Conduct 1.16(b)(1)(5)(6) and EDCR 7.40 and hereby moves this Honorable Court to allow the attorneys and law firm of MCAVOY AMAYA & REVERO ATTORNEYS to withdraw as attorneys of record for Defendant MARLON BROWN.

...

...

...

...

1 This Motion is based upon and supported by the following Memorandum of Points
2 and Authorities, the pleadings and papers on file, the affidavit and exhibits attached
3 hereto, and any argument that this Honorable Court may allow at the time of the hearing.

4
5 DATED this 29th day of November, 2022.

6 /s/ Michael J. Mcavoyamaya
7 MICHAEL J. MCAVOYAMAYA, ESQ.
8 Nevada Bar No.: 14082
9 600 S. 8th Street
10 Las Vegas, Nevada 89121
11 Telephone: (702) 299-5083
12 mike@mrlawlv.com
13 *Attorney for Plaintiff*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT.

Nevada Rules of Professional Conduct Rule 1.16(b)(5) provides that an attorney may withdraw from representation a client if “[t]he client fails to substantially fulfill an obligation to the lawyers regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” Here, Defendant has repeatedly ignored counsel’s directives to discontinue filing cases intersecting with the claims in this case before other courts and this Court. As this Court is aware, Plaintiff has filed numerous cases involving the same issues including in case numbers 2:18-cv-00165-KJD-NJK and 2:19-cv-01350-APG-DJA. Ultimately, this Court consolidated this case with 2:19-cv-01350-APG-DJA after counsel entered the case in representation of Plaintiff. *See* ECF No. 83. Counsel had intended to represent Plaintiff in the federal habeas petition that needed to be filed after his habeas petition in the Nevada Supreme Court was denied and Plaintiff had exhausted all his remedies. This was preferential so that counsel could insure that matters raised in that petition did not intersect or conflict with claims in this case so that both matters could proceed. However, Plaintiff chose to once again file a case on his own, over the advice of counsel, and has raised claims involving the same issues that are proceeding in this case. *See* Brown Pro-Se Pet. Habeas Corpus, attached as **Exhibit 1**, at 8-11; *see also* 3:23-cv-00148-RCJ-CLB, ECF No. 8.

On November 29, 2023, Plaintiff and counsel discussed this case and the fact that the habeas petition he filed now intersects with the issues in this case. Plaintiff indicated that he believed that this case would now need to be stayed or dismissed without prejudice pursuant to *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994) because he is raising the issue of his illegal pretrial detention as a claim to invalidate his conviction in the new habeas case. Given that Plaintiff has decided to bring essentially the same claims in the petition for habeas corpus as he has in this case and seeking the remedy of invalidating his conviction, undersigned counsel informed Plaintiff that he believed it

1 would be best if counsel withdraws from this case given that there is now an irreconcilable
2 conflict between Plaintiff and counsel on whether this matter may or should proceed.

3 Plaintiff's view of the issues in this case and their affect on his conviction have
4 deviated from counsel's position argued in response to Defendants' Motion to Dismiss.
5 See ECF No. 116, at 20:19-24. Defendants argued that "claims of false evidence, perjury,
6 and a lack of probable cause for a bond revocation are subject to the *Heck* favorable
7 termination rule." *Id. citing Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed.
8 2d 383 (1994). In response to Defendants' Motion to Dismiss, counsel argued, on
9 Plaintiff's behalf, that "*Heck* applies only to challenges to convictions or a sentence
10 resulting from a conviction" and that "Brown does not challenge the validity of his
11 conviction or sentence in his criminal case." See ECF No. 119, at 23:6-27. Counsel argued
12 that "Brown instead challenges the validity of his continued pre-trial, pre-conviction, and
13 pre-sentence confinement without bail and all damages that have resulted from it," and
14 that these claims did not implicate the validity of his conviction triggering a bar pursuant
15 to *Heck*. *Id.* Plaintiff is now insisting on pursuing the illegal pretrial detention issues pro-
16 se in the habeas case and seeking the remedy of invalidating his conviction, which the
17 undersigned now believes likely bars the claims in this case under *Heck* unless the
18 conviction is invalidated. Indeed, Brown's new federal habeas petition expressly alleges
19 that his pretrial arrest while on bond by Tromba and other LVMPD officers, and the
20 "Fraud on the Court" via the forward dated the custody record, which is the cornerstone
21 of the remaining judicial deception claim in this case, affects the validity of his conviction.
22 See **Ex. 1**, at 8-10. Plaintiff's position on this issue presents an irreconcilable conflict
23 between counsel and Plaintiff regarding counsel's representation in this case, and
24 whether the case should even proceed at all. Plaintiff indicated that he understood these
25 issues, intends to file a motion in this case on the *Heck* issue pro-se, and does not object
26 to counsel's withdrawal from this case.

27 "When an attorney seeks leave from the court to withdraw from a case 'in the
28 absence of the client's consent,' the attorney must show that 'justifiable cause' exists to do

1 so.” *Harris v. Diamond Dolls of Nev., LLC*, No. 3:19-cv-00598-RCJ-CBC, 2023 U.S. Dist.
2 LEXIS 166041, at *7 (D. Nev. Sep. 18, 2023). When considering a motion to withdraw as
3 counsel, the Court must consider several factors including: “(1) the reasons for
4 withdrawal, (2) prejudice that may be caused to other litigants, (3) harm caused to the
5 administration of justice, and (4) delay to the resolution of the case.” *Id. see also Gilbert*
6 *v. Doctor's Choice Modesto, LLC*, No. 1:21-cv-00690-AWI-SAB, 2022 U.S. Dist. LEXIS
7 161372, at *5-6 (E.D. Cal. Sep. 7, 2022). This is not a terribly demanding standard. *Id.*

8 Notably, here, Plaintiff has consented to counsel’s withdraw from the case and
9 counsel is informed and believes that he will not be filing any opposition to the
10 withdrawal. Counsel has sufficient reasons for withdrawing from this case given that
11 Plaintiff is insisting on proceeding pro-se on the same claims challenging his conviction
12 in his habeas case. Defendants counsel has also indicated that they do not oppose
13 counsel’s withdrawal, indicating that they are not prejudiced by the withdrawal. There
14 will be no delay in resolution of this case given that discovery is still open and not set to
15 close until March 4, 2024, giving the parties four months to conduct discovery should it
16 be needed. Further, counsel is informed and believes that Plaintiff will be filing a pro-se
17 motion seeking to stay the case, or dismiss it without prejudice pursuant to *Heck* in light
18 of his pending habeas case. Should Plaintiff file such a motion, resolution of this case
19 would be expedited by counsel’s withdraw, not delayed.

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

As such, pursuant to Nevada Rules of Professional Conduct Rule 1.16(b)(5) and (6), Nevada Supreme Court Rule 46 and Local Rule IA 11-6 undersigned counsel moves to withdraw from representation in this case.

CONCLUSION

For the foregoing reasons, the undersigned requests that this Court grant his motion to withdrawal as counsel of record.

DATED this 29th day of November, 2023.

/s/ Michael J. Mcavoyamaya
MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 14082
600 S. 8th Street
Las Vegas, Nevada 89121
Telephone: (702) 299-5083
mike@mrlawlv.com
Attorney for Plaintiff

Good cause being found, the Court grants Plaintiff's counsel's motion to withdraw (ECF No. 131). Counsel shall file proof of service of this order on Plaintiff within fourteen (14) days of its entry.

It is Further Ordered that Plaintiff shall file notice with the Court within thirty (30) days of receiving notice of this order whether he intends to associate new counsel or proceed *pro se*.

IT IS SO ORDERED

DATED: 7:03 am, December 01, 2023



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE